

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.199 OF 2019
WITH
CIVIL APPLICATION NO.669 OF 2019
IN
FIRST APPEAL NO.199 OF 2019
WITH
CIVIL APPLICATION NO.668 OF 2019**

Sushila Prataprai Kanakia & Ors. ... Appellants
V/s.
Municipal Corporation of Greater Bombay ... Respondent

Mr. Sachin Chavan for the appellants.

Mr. Santosh Parad for the respondent No.1/MCGM.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 9, 2023

P.C.:

1. The appellants are original plaintiffs who had filed a suit seeking declaration that plaintiffs be declared as tenants in relation to the suit property. In the alternative, relief of possession of suit property was also sought. Further relief of mandatory injunction to remove encroachment on the suit property was also sought.

2. The facts giving rise to the present appeal are as under: The plaintiff is carrying out business. The defendant is a statutory body.

Initially, one Mrs. Siddika Dalvi was a tenant of the defendants in respect of the suit property paying monthly rent of Rs.600/-. The plaintiffs was in exclusive possession of the suit property. One M/s.Devi Prasad Khandelwal was in possession and occupation of Plot No.49.

3. On 31st March 1959, the plaintiff learnt that defendant recovered possession of Plot No.49 from Devi Prasad Khandelwal pursuant to the decree of possession in B.C.C.C. Suit No.3277 of 1959. The plaintiff had, therefore, filed B.C.C.C. Suit No.7177 of 1972 seeking perpetual injunction restraining the defendant from forcibly dispossessing plaintiff from/ Plot No.48. Pending the said suit, according to the plaintiff a communication dated 4 February 1981 was issued which required plaintiff to withdraw the said suit and pay ground rent of Rs.1,48,186/-. There were other conditions imposed on the plaintiff. According to the plaintiff, defendant agreed transfer tenancy rights in favour of the plaintiff in respect of suit property and on failure of removal of encroachment on Plot No.49, the plaintiff filed the suit.

4. The defendant/Municipal Corporation contested the suit by filing a written statement submitting that as per their record Mrs. Siddika Dalvi is the tenant. The defendant has not created any right, title and interest in relation to the suit property in favour of the plaintiff. The learned Trial Court framed necessary issues and dismissed the suit.

5. The learned Trial Court based on evidence recorded following facts as admitted facts:

“32. From the evidence on record the following facts are admitted:-

- a) that the defendant Municipal Corporation, Gr. Mumbai is the owner of the suit property.
- b) that Mrs. Siddhika Dalvi was the vacant land tenancy holder of suit property.
- c) that Suit property is plot no.48-49, scyheme no.32, Byculla, Mumbai-10.
- d) that defendant corporation had filed suit no.3277/1959 against M/s Devi Prasad Khandelwal possessor of plot no.49. The said suit was decreed and defendant came in possession of plot no.49.
- e) that plaintiff had filed suit no.7177 of 1972 against defendant corporation for perpetual injunction for taking forcible possession of the suit property. In that suit this court had granted ad interim relief in favour of plaintiff. Later on in the year 1982, plaintiff has withdrawn the said suit.
- f) that The plaintiff had filed another suit bearing no.6669/84 for declaration that plaintiff is vacant land tenant of the suit property. This court returned the plaint to the plaintiff under order 7 rule 10 of the CPC for the presentation in proper court.
- g) that The defendant had initiated proceeding under section 105 B of the Mumbai municipal corporation Act against the plaintiff and others and enquiry officer had directed the plaintiff and others to vacate the suit property.
- h) that plaintiff had filed Misc appeal before Hon'ble Principal Judge, Bombay City Civil Court, Bombay and appeal of the plaintiff was allowed.
- i) that The defendant Municipal corporation had filed writ petition in the Hon'ble High Court and Hon'ble High Court permitted the defendant to withdraw the appeal and also granted liberty to take action as per the provisions of law.

j) that There is exchange of correspondence between plaintiff and defendant.

6. The learned Trial Court based on the evidence on record recorded a finding that the plaintiff is not tenant of the premises.

7. On perusal of the material on record, it appears that the Corporation (General Body) has not executed any document in favour of the plaintiff creating right, title and interest in favour of the plaintiff. The mode and manner of disposal of municipal property is regulated by section 92 of Mumbai Municipal Corporation Act, 1988. The said section requires either Commissioner or Standing Committee to follow procedure for grant of lease or any other rights governing disposal of the municipal property.

8. Undisputedly, in the present facts, there is no document issued by the defendant purportedly under section 92 of the Mumbai Municipal Corporation Act, 1988. In absence of such document creating enforceable right in favour of the plaintiff, no relief in relation to the municipal property can be granted in favour of the plaintiff. The plaintiff is not claiming enforcement of any statutory rights conferred under the provisions of the Mumbai Municipal Corporation Act. In the absence of any enforceable, contractual or statutory right, the relief prayed in the suit against the Corporation cannot be granted. The learned Trial Court has rightly recorded a finding that the plaintiff has failed to prove that he is tenant in the suit property.

9. For the aforesaid reasons, there is neither question of fact

nor question of law involved in the appeal.

10. The first appeal is, therefore, dismissed by Order 41 Rule 11 of the Code of Civil Procedure, 1908.

11. In view of dismissal of the first appeal, the interim applications does not survive and are disposed of accordingly.

(AMIT BORKAR, J.)